

1 Pamela M. Egan, WSBA No. 54736 (*pro hac vice*)  
2 POTOMAC LAW GROUP  
3 1905 7<sup>th</sup> Avenue W  
4 Seattle, Washington 98119  
5 Telephone: (415) 297-0132  
6 Facsimile: (202) 318-7707  
7 Email: pegan@potomacclaw.com  
8 *Attorneys for Mark D. Waldron, Chapter 11 Trustee*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington  
corporation,

Debtor.

Case No. 18-03197

The Honorable Frederick P. Corbit

**CHAPTER 11 TRUSTEE'S  
OBJECTION TO AMENDED  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY;  
ABANDONMENT OF PROPERTY  
OF THE ESTATE; WAIVER OF  
FRBP 4001(a)(3)**

CHAPTER 11 TRUSTEE'S OBJECTION TO PORT'S MOTION FOR RELIEF  
FOR STAY AND FOR ABANDONMENT

1 TABLE OF CONTENTS

2 I. INTRODUCTION .....1

3 II. BACKGROUND FACTS .....3

4 III. POINTS AND AUTHORITIES .....5

5 A. Section 362(b)(10) Is Inapposite.....5

6 B. Abandonment Is Inappropriate.....6

7 1. The Pangborn Equipment Is Property of the Estate .....7

8 2. The Mechanics’ Liens Do Not Reduce the Personal Property’s Value ..7

9 IV. CONCLUSION .....8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

1 **TABLE OF AUTHORITIES**

2 **CASES**

3

4 *In re Johnston*, 49 F.3d 538, 540 (9th Cir. 1995).....6

5 *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1662, 203 L.

6 Ed. 2d 876 (2019) .....6

7 **STATUTES**

8 11 U.S.C. § 362.....5

9 11 U.S.C. § 362(b)(10) .....2

10 11 U.S.C. § 365(g).....6

11 11 U.S.C. § 554.....6

12 RCW 60.04.021 .....8

13 RCW 60.04.141 .....7

14

15

16

17

18

19

20

21

22

1 Mark D. Waldron, in his official capacity as the Chapter 11 Trustee (the  
2 “**Trustee**”) hereby objects (the “**Objection**”) to the *Amended Motion for Relief*  
3 *from Automatic Stay; Abandonment of Property of the Estate; Waiver of FRBP*  
4 *4001(a)(3)*, filed on February 11, 2020 [ECF 478] (the “**Motion**”) by the Chelan  
5 Douglas Regional Port Authority, formerly the Port of Douglas County (the  
6 “**Port**”). This Objection is supported by the Declaration of Mark D. Waldron (the  
7 “**Waldron Declaration**”) and the points and authorities set forth below.

8 In support of the Objection, the Trustee respectfully avers:

## 9 I. INTRODUCTION<sup>1</sup>

10 The Trustee is engaged in active efforts to sell the Debtor’s personal  
11 property, both affixed and not affixed, (the “**Pangborn Equipment**”) located on  
12 the Port’s real property (the “**Premises**”), subject to Court approval. The Trustee  
13 is in discussion with IronPlanet/Ritchie Brothers, highly experienced equipment  
14 auctioneers, to retain them to sell the Pangborn Equipment, subject to Court  
15 approval. IronPlanet/Ritchie Brothers has reviewed the Pangborn Equipment and  
16 has informed the Trustee that the Pangborn Equipment may have an estimated  
17 worth of between \$1 million and \$2 million. In addition, the Trustee is in active  
18 discussions with a potential purchaser of the Pangborn Equipment, Griid  
19 Infrastructure of Greenwich, Connecticut. The electrical engineer for Griid

---

22 <sup>1</sup> Unless otherwise defined herein, capitalized terms used in this section  
23 have the meanings ascribed to them elsewhere in this Objection.

1 Infrastructure is scheduled to examine the Pangborn Equipment in person with the  
2 Trustee's consultant, Lauren Mieke, on Tuesday, March 3, 2020.

3 Months ago, the Trustee offered to sell the Pangborn Equipment jointly  
4 with the Port, to cooperate with the Port and to divide the sale proceeds in  
5 appropriate fashion, subject to Court approval. The Pangborn Equipment, while  
6 valuable, is also highly specialized. It took considerable effort to find the right  
7 professional, IronPlanet, and a serious buyer, Griid Infrastructure. Further, it  
8 would have cost the estate \$18,000 approximately to move the Pangborn  
9 Equipment and the estate has insufficient space to store such specialized  
10 equipment.

11 Further, the Motion should be denied on its merits. Section 362(b)(10) does  
12 not allow a lessor to take a defaulting tenant's personal property. 11 U.S.C.  
13 § 362(b)(10). It allows the lessor of a terminated lease to recover its real property.  
14 Here, the Lease was not terminated, and the lessor is attempting to recover  
15 personal property. This is inappropriate.

16 Abandonment is similarly inappropriate because the Pangborn Equipment is  
17 valuable to the estate. The Port seems to base its contrary conclusion on the fact  
18 that the real property is of no value to the estate given the lack of electricity.  
19 However, the real property is inapposite. The Port is seeking abandonment of the  
20 Pangborn Equipment.

21 Finally, all of the Pangborn Equipment, whether affixed or not, is property  
22 of the estate. The Lease very clearly provides that the tenant owns the

1 improvements. Even upon breach, there is no provision of forfeiture of that  
2 personal property. Instead, the Lease actually gives the Port the option of storing  
3 the personal property for Giga Watt's benefit and at Giga Watt's expense.

4 In summary, the Trustee has worked diligently to find a qualified auctioneer  
5 and serious buyer for the valuable, but highly specialized Pangborn Equipment.  
6 Therefore, the Motion should be mooted shortly. Further, the Motion fails on its  
7 merits. Section 362(b)(10) does not apply to the recovery of personal property and  
8 abandonment is not appropriate given the value of the Pangborn Equipment.

## 9 II. BACKGROUND FACTS

10 On March 9, 2017, the Port and Giga Watt, Inc. ("**Giga Watt**") executed  
11 that certain *Land Lease for Portion of Pangborn Airport business Park East*  
12 *Wenatchee, Washington* (the "**Lease**") pursuant to which Giga Watt leased from  
13 the Port approximately 7.9 acres of real property defined in the Lease as the  
14 Premises. On August 15, 2017, the Port and Giga Watt signed that certain  
15 *Addendum to Lease Agreement Pangborn Airport Business Park East Wenatchee,*  
16 *Washington* (the "**Addendum**"), which modified certain terms of the Lease.<sup>2</sup> A  
17 copy of the Lease and Addendum is attached hereto as **Exhibit A**.

18 The Lease was a triple-net lease. **Exh. A**, Lease at ¶ 4g. Pursuant to the  
19 Lease, Giga Watt provided a cash deposit to the Port of \$350,000.

---

21  
22 <sup>2</sup> The Port adds incorrectly that Giga Watt is liable under the CERB loan.  
23 Motion at 4:11-16. Based on the Trustee's review, this is not correct.

1 On November 1, 2018, the Port filed a *Verified Complaint for Unlawful*  
2 *Detain in the Superior Court of the State of Washington for the County of Douglas*  
3 (the “**Verified Complaint**”). A copy of the Verified Complaint is attached hereto  
4 as **Exhibit B**. In the Verified Complaint, the Port admitted that “tenant is the  
5 owner of any substation and improvements constructed on the premises, except  
6 those improvements which are defined as ‘Permanent Structures’ under the  
7 Lease.” **Exh. B**, Verified Complaint, at ¶ 10, 2:19-21. As set forth below,  
8 “Permanent Structures” are defined in the Lease as buildings, not buildings that  
9 are slab-on-grade and not equipment.

10 By the Verified Complaint, the Port sought, *inter alia*, a judgment  
11 terminating the Lease, alleging, “The [Port] is entitled to an Order terminating the  
12 Lease Agreement.” Verified Complaint, **Exh. B** at ¶ 17, 4:10-11.

13 On November 19, 2018, the Debtor commenced this case by filing a  
14 voluntary petition for relief pursuant to sections 101, *et seq.* of the title 11 of the  
15 United State Code (the “**Bankruptcy Code**”). The filing stayed the unlawful  
16 detainer action that the Port had commenced. Therefore, the state court did not  
17 issue an Order terminating the Lease, as requested by the Port.

18 On January 23, 2019, the Court approved the appointment of Mark D.  
19 Waldron as the Trustee pursuant to its *Order Approving Appointment of Chapter*  
20 *11 Trustee* [Docket. No. 146].

21 On April 16, 2019, the Court entered its *Order Granting Chapter 11*  
22 *Trustee’s Motions for Orders (i) Approving Stipulation Pursuant to LBR 9013-*

1 *1(c)(3) and (iii) Granting Expedited Consideration Thereof* [ECF 276] (the  
2 “**Stipulated Order**”). Pursuant to the Stipulation, the Lease was deemed rejected  
3 in June 2019.

### 4 **III. POINTS AND AUTHORITIES**

#### 5 **A. Section 362(b)(10) Is Inapposite**

6 The Port invokes section 362(b)(10) of the Bankruptcy Code to obtain relief  
7 from the stay in order to obtain personal property that belongs to the estate,  
8 specifically, the Pangborn Equipment. Section 362(b)(10) does not permit a lessor  
9 to recover the debtor’s personal property after the debtor has rejected the lease.  
10 Instead, it allows a lessor to recover its real property upon termination of a lease.  
11 Section 362(b)(10) states that the automatic stay does not apply to:

12 . . . any act by a lessor to the debtor under a lease of  
13 nonresidential real property ***that has terminated*** by the  
14 expiration of the stated term of the lease before the  
commencement of or during a case under this title ***to***  
***obtain possession of such property. . . .***

15 11 U.S.C. § 362. (Emphasis added.) “Such property” clearly refers to the leased  
16 nonresidential real property. Thus, section 362(b)(10) does not support the Port’s  
17 request to obtain possession of the Debtor’s personal property.

18 Section 362(b)(10) does not apply for the additional reason that the Lease  
19 was never terminated. If the Lease had been terminated, then there would have  
20 been no need for pray for an order terminating the Lease in the Verified  
21 Complaint. Further, it would have been impossible to stipulate to the extension of  
22 the Trustee’s deadline to assume or reject the Lease.



1 The deemed rejection of the Lease in June 2019 did not terminate the Lease.  
2 *See Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1662, 203  
3 L. Ed. 2d 876 (2019) (“A rejection does not terminate the contract.”). In *Mission*  
4 *Product Holdings*, the Supreme Court clarified that rejection is to be treated as if  
5 it were a pre-petition breach. Whatever rights the parties would have in that  
6 situation, they have in bankruptcy. *See Mission Prod. Holdings, supra*:

7 Rejection “constitutes a breach of [an executory]  
8 contract,” deemed to occur “immediately before the date  
9 of the filing of the petition.” . . . Or said more pithily for  
10 current purposes, a rejection is a breach. And “breach” is  
11 neither a defined nor a specialized bankruptcy term. ***It***  
***means in the Code what it means in contract law***  
***outside bankruptcy.***

12 *Id.*, 139 S. Ct. at 1661 (quoting 11 U.S.C. § 365(g)). (Emphasis added.)

13 Therefore, the Court should deny the Port’s request for relief from the stay.

#### 14 **B. Abandonment Is Inappropriate**

15 The Motion is also brought pursuant to 11 U.S.C. § 554. On its face, § 554  
16 permits abandonment only “upon a showing that property is either of  
17 inconsequential value and benefit to the estate or burdensome to the estate.” *In re*  
18 *Johnston*, 49 F.3d 538, 540 (9th Cir. 1995). The Port makes no showing that the  
19 equipment left on the Premises is of inconsequential value and benefit to the estate  
20 or burdensome. Indeed, as set forth in the Waldron Declaration, the equipment is  
21 valuable to estate.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5

$$\begin{matrix} 2 \\ 3 \end{matrix}$$

- 4  
5  
6  
7  
8  
9  
0  
1

3

4  
5

6  
7  
8

3

1 substation and the real property. **Exh. A**, Verified Complaint, Exhibit C attached  
2 thereto, ¶ 4. *See also* RCW 60.04.021 which states:

3 Except as provided in RCW 60.04.031, any person  
4 furnishing labor, professional services, materials, or  
5 equipment for the improvement of real property shall  
6 have a lien ***upon the improvement*** for the contract price  
of labor, professional services, materials, or equipment  
furnished at the instance of the owner, or the agent or  
construction agent of the owner.

7 RCW 60.04.021. (Emphasis added.) Further, the lien of Neppel Electrical &  
8 Controls, LLC is only asserted against the real property. **Exh. A**, Verified  
9 Complaint, Exhibit D attached thereto. However, the Port seeks an order requiring  
10 the Trustee to abandon a broad set of equipment and other personal property that  
11 is of value to the estate. Furthermore, there is no evidence that the value of any  
12 improvement to which the liens may attach is greater than the value of the asserted  
13 liens.

14 Therefore, the Port's request for abandonment is without merit.

#### 15 IV. CONCLUSION

16 WHEREFORE, the Trustee respectfully requests that the Court deny the  
17 Motion in its entirety and with prejudice.

18 Dated: February 28, 2020 POTOMAC LAW GROUP

19  
20 By: /s/ Pamela M. Egan  
Pamela M. Egan (WSBA No. 54736)

21 *Attorneys for Mark D. Waldron, Chapter 11*  
22 *Trustee*